92-1268

Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1992

MARGARET OCHS, as Personal Representative of the Estate of Alan Ochs, deceased, and MARGARET OCHS, Individually, and BRIAN KEITH OCHS, MARK ALAN OCHS, WILLIAM THOMAS OCHS, BERRY ALAN OCHS, being all the surviving heirs of Alan Keith Ochs, deceased,

Petitioners,

vs.

CHERYL JEAN EASTER,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Missouri

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I.

Whether adopted persons constitute a classification which is entitled to heightened scrutiny under the Equal Protection provisions of the Fourteenth Amendment of the United States Constitution; and whether the State has a legitimate state interest in disqualifying adopted persons from taking as fee-tail remaindermen.

II.

Whether a judicial decree of adoption by the courts of a state is entitled to Full Faith and Credit in a sister state under Art. IV, § 1 of the United States Constitution so that the adopted person in the sister state must be given the same treatment under law as is given to natural born persons in the sister state.

LIST OF ALL PARTIES

The parties to the proceedings below were Plaintiff (Respondent herein) Cheryl Jean Easter of P. O. Box 930, Flora Vista, NM 87415, and Defendants (Petitioners herein) Margaret Ochs, as personal representative of the estate of Alan Keith Ochs, deceased, and Margaret Ochs, individually, and Brian Keith Ochs, Mark Alan Ochs, William Thomas Ochs, Berry Alan Ochs, being all the surviving heirs of Alan Keith Ochs, deceased, all of 1207 2nd Street, Graham, TX 76046.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Margaret Ochs, as personal representative of the estate of Alan Keith Ochs, deceased, and Margaret Ochs, individually, and Brian Keith Ochs, Mark Alan Ochs, William Thomas Ochs, and Berry Alan Ochs, being all the surviving heirs of Alan Keith Ochs, deceased, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Missouri entered in the above-entitled proceeding on September 22, 1992.

OPINIONS IN THIS CASE BELOW

The opinion of the Supreme Court of Missouri has been reported at *Easter v. Ochs*, 837 S.W.2d 516 (Mo. 1992) (en banc). It is reprinted in the appendix, at App. 1, infra.

The opinion of the Missouri Court of Appeals, *Easter v. Ochs*, No. 60116, Feb. 25, 1992 (Mo. Ct. App.) (unpublished opinion) (1992 Westlaw 31798) was not reported. It is, however, available in the Missouri cases database of WESTLAW. It is reprinted in the appendix, at App. 13, infra.

The judgment of the circuit court of Perry County, Missouri is neither reported nor published. It is reprinted in the appendix, at App. 34, infra.

JURISDICTION

The opinion of the Supreme Court of Missouri was filed on September 22, 1992. (App. 1, infra.) Within the fifteen (15) days allowed under Rule 84.17 of the Missouri Rules of Civil Procedure, a Motion for Rehearing was filed on October 1, 1992. (App. 9, infra). On October 27, 1992, the Supreme Court of Missouri entered its order overruling the Motion for Rehearing. (App. 12, infra.)

The jurisdiction of this Court to issue a writ of certiorari is sought under 28 U.S.C.A. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following Constitutional provisions and statutes are involved in this case.

United States Constitution, Article IV, § 1:

> Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general law prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

United States Constitution, Article XIV, § 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall

> abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Mo. Rev. Stat. § 14079 (1929) (repealed):

> Consequences of Adoption. When a child is adopted in accordance with the provisions of this article, all legal relationship, and all rights and duties, between such child and its natural parents shall cease and determine. Said child shall thereafter be deemed and held to be for every purpose, the child of its parent or parents by adoption, as fully as though born to them in lawful wedlock. Said child shall be entitled to proper support, nurture and care from said parents by adoption, and shall be capable of inheriting from, and as the child of said parents as fully as though born to them in lawful wedlock. Said parent or parents by adoption shall be entitled to the service, wages, control, custody and company of said adopted child, and shall be capable of inheriting from, and as the parents of, said adopted child as fully as though the child had been born to them in lawful wedlock. Provided, however, that, neither said adopted child nor said parents by adoption shall be capable of inheriting from or taking through each other property expressly limited to heirs of the body of such child or parent by adoption.

Colo. Rev. Stat. Chap. 4, § 5 (1935):

> Natural parents divested of all rights – Descent of property. – The natural parents shall by such

order, be divested of all legal rights and obligations in respect to the child, and the child be free from all legal obligations of obedience and maintenance in respect to them; such child shall be to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to all the rights and privileges and subject to all obligations of a child of such person begotten in lawful wedlock; upon the death of an adopted child who is survived by neither spouse nor descendant all of his property which is not otherwise disposed of by will shall descend to the family of which he is a member by adoption as if he had been born a member of such family; and neither his natural parents nor any other member of his natural family shall be entitled to any rights by virtue of any of the intestate laws of this state. [L. '31, p. 152, § 5].

Mo. Rules of Appellate Procedure, Rule 84.04 Briefs – Contents

(a) Contents. The brief for appellant shall contain: (1) A concise statement of the grounds on which jurisdiction of the review court is invoked; (2) A statement of the facts; (3) The points relied upon; and (4) An argument which shall substantially follow the order of "Points Relied On."

(d) Points Relied On. The points relied on shall state briefly and concisely what actions or rulings of the court are sought to be reviewed and wherein and why they are claimed to be erroneous, with citations of authorities thereunder. If more than three authorities are cited in support of a point made, the three authorities principally relied on shall be cited first. All authorities discussed in the argument shall be

cited under the "Points Relied On." Long lists of citations should not be included.

Mo. Rules of Appellate Procedure, Rule 84.17 Motions for Rehearing

> A motion for rehearing shall briefly and distinctly state the grounds upon which a rehearing is sought. It may be accompanied by suggestions in support containing citations of authorities. The motion shall be filed within fifteen days after the opinion of the court is filed, and the motion and suggestions shall be served on the adverse party or his attorney within that time. If a motion is overruled, no further motion by the same party for rehearing or to set aside the order overruling the motion for rehearing may be filed.

STATEMENT OF THE CASE

On June 28, 1937, Adolph Ochs made a last will, which included:

> 7th. I devise to my son, Erwin Ochs, of Colorado, . . . [the] "Mary Knox Farm" in fee; and I also devise to said Erwin Ochs for and during his natural life with remainder to his bodily heirs . . . the "Floyd Knox Farm"; and I further devise to him the remainder after my wife's life estate in the Christian Ochs farm . . . to him and his bodily heirs.
>
> 9th. The 125 acres in said Bois Brule Bottom . . . devise as follows: . . . the remaining one-third to my son, Erwin Ochs, and the heirs of his body.

> 10th. I bequeath . . . all the rest and residue of my property . . . in equal parts to my wife and my said children, my wife taking a child's part therein.

(App. 2-3).

Adolph died on July 4, 1937. His spouse, Rosetta, died intestate on January 10, 1943. Adolph and Rosetta had three children – Erwin, Esther, and Oneida. All parties agree that Esther Weinrich and the heirs of Oneida Bergman have filed quitclaim deeds surrendering their interests in the four farms being contested, and are not necessary parties. (App. 3)

Erwin and his spouse, Stella, had no natural children; they did adopt Cheryl and Alan on January 15, 1947, in Colorado. Erwin's will left all his property to Stella. After Erwin's death in 1976, Stella conveyed to Cheryl, by quitclaim deed, the Christian Ochs farm. Stella died on January 15, 1986. Her will devised all her real estate – including her claim to the remaining three farms – to Cheryl, and expressly disinherited Alan. (App. 3).

The fundamental issue at trial was whether Cheryl Easter and Alan Ochs qualified as heirs of the body of their adoptive parents, each of them receiving a one-half interest in the lands, or whether the entailment tailed, title to the lands reverting to the grantor Adolph Ochs, and eventually passing to Cheryl Easter. (App. 15-16). The question became whether their qualification as heirs of the body was governed by the Colorado statute under which they were adopted, (page 3-4, *supra*) or the Missouri statute where the land was situated (page 3, *supra*).

The federal questions involved herein were first raised in the trial court, being the Circuit Court of Perry County, Missouri, on a joint motion from summary judgment upon stipulated facts. In their memorandum in support of summary judgment, defendants (petitioners herein) noted that Full Faith and Credit had been given to foreign adoptions from sister states as in the case of *Delaney v. First National Bank*, 386 P.2d 711 (N.M. 1963), and that one cannot arbitrarily divide the status of adoption and inheritance rights from same. It was suggested that this Court's case of *Hood v. McGeehee*, 237 U.S. 611 (1915), should be distinguished as simply involving contract rights contained within an instrument of adoption and not giving effect to statutes construing same. (App. 45, 46).

The question of violation of Equal Protection under the Fourteenth Amendment of the United States Constitution was raised, relying by analogy on this Court's cases of *Levy v. Louisiana*, 391 U.S. 68 (1968); and *Glona v. American Guarantee and Liability Ins. Co.*, 391 U.S. 73 (1968). (App. 46). These two cases held that it violated Equal Protection to deny to illegitimate children the right to recover for the wrongful death of their parents, and, likewise, to deny to a parent the right to recover for the wrongful death of his illegitimate child. (App. 46).

In its judgment, the trial court did not address these constitutional issues at all, but remained silent. The Court merely found that "there is no dispute as to any material fact and that Plaintiff is entitled to a summary judgment as a matter of law." (App. 34).

The federal questions raised in the Missouri Court of Appeals were, first, that under the Full Faith and Credit Clause of Article IV of the United States Constitution, since the Colorado decree of adoption declared these persons the same as natural born children for all intents and purposes, Missouri must so recognize them, and thus they would qualify as heirs of the body. (App. 29, 30). Second, it was that the former Missouri statute violated Equal Protection and Substantive Due Process because it discriminated against adopted persons on the basis of parentage, that the classification of adopted persons as such was a suspect classification, and the denial of their right to inherit as fee-tail remaindermen forwarded no compelling state interest. (App. 30, 31).

The Court of Appeals noted that the constitutional challenges were raised in such a manner as to preserve the issue for appellate review, stating: "appellants in this sufficiently preserved their constitutional challenge to the statute." (App. 22). The Court of Appeals found that in recognizing the status of the parties as adopted children, the trial court had afforded full faith and credit to the Colorado adoption decree, and had correctly applied Missouri law concerning their remainderman status as to Missouri realty. (App. 21-22).

The Court of Appeals did not rule on the constitutional question of Equal Protection, but found it to be real and substantial.

> The repealed statute, however, continues to affect the rights of some adopted children, as demonstrated by the present case. Thus, the constitutional question raised by appellants is real and substantial. Accordingly, we transfer

this case to the Missouri Supreme Court. (App. 23).

The federal questions raised in the Supreme Court of Missouri were, first, that under the Full Faith and Credit Clause of Article IV of the United States Constitution, that since the Colorado decree of adoption declared these persons the same as natural born children for all intents and purposes, that Missouri must so recognize them, and thus they would qualify as heirs of the body. (App. 25). Second, it was asserted that the former Missouri statute violated Equal Protection and Substantive Due Process because it discriminated against adopted persons on the basis of parentage, and that the classification forwarded no compelling state interest nor had a rational relationship to a legitimate state purpose. (App. 26).

The Supreme Court of Missouri resolved the issue of full faith and credit by holding that Missouri need only recognize the parties as "adopted children" and treat them as any two children adopted in Missouri. (App. 7). The Court further held that the Missouri statute prohibiting adopted children from taking as heirs of the body was not limited solely to Missouri adoptions, following the decision of this Court in *Hood v. McGeehee*, 237 U.S. 611 (1915), and that inasmuch as *McGeehee* had not been overruled that they were compelled to deny the claim. (App. 7).

The issue of Equal Protection and Due Process was resolved upon the point that in drafting his will, Adolph Ochs was a private actor, and that thus the element of state action necessary to bring the former Missouri statute under examination was lacking. (App. 7-8). The court additionally noted that since these constitutional provisions do not directly restrict the ability of a testator to dispose of his property, they were not violated by the acts of Adolph Ochs himself. (App. 8).

REASONS FOR GRANTING THE WRIT

Erwin Ochs adopted Cheryl and Alan in a judicial proceeding in Colorado in 1947. Under the law of Colorado, at the time of the adoption Cheryl and Alan became the children of Erwin, as if naturally born. It clearly has *no* limitation as to either the status or rights of an adopted child.

> . . . such child shall be to all intents and purposes the child and legal heir of the persons adopting him or her, entitled to all the rights and privileges . . . of a child of such person begotten in lawful wedlock . . .

Colo. Rev. Stat. chapter 4, § 5 (1935). (Page 4, *supra*).

The Supreme Court of Missouri believed its decision on the question of Full Faith and Credit was governed by the decision of this Court in *Hood v. McGeehee*, 237 U.S. 611 (1915). (App. 7). In *McGeehee*, two children adopted in Louisiana were denied the right to take real property in Alabama by descent from their foster parents. The

adopted children appealed claiming that the State of Alabama was compelled by the Full Faith and Credit Clause of the United States Constitution to recognize their rights of inheritance as adopted children of the state of Louisiana. The opinion of this Court stated:

> The Alabama statute of descents as construed by the supreme court of the state excludes children adopted by proceedings in other states. There is no ground upon which we can go behind these decisions, and the law, so construed, is valid. The construction does not deny the effective operation of the Louisiana proceedings, but simply reads the Alabama statute as saying that, whatever may be the status of the plaintiffs, whatever their relation to the deceased by virtue of what has been done, the law does not devolve his estate upon them. There is no failure to give full credit to the adoption of the plaintiffs, in a provision denying them the right to inherit land in another state. Alabama is the sole mistress of the devolution of Alabama land by descent. *Id.* at 237 U.S. 614.

The basis for this holding is apparently a distinction between the *status* of an adoption and the *incidents* of an adoption. Such was the reasoning of the Supreme Court of Pennsylvania in *In Re Zoell's Estate,* 29 A.2d 31 (Pa. 1942), *cert. denied, Githins v. Estate of Zoell,* 318 U.S. 778 (1943). In *Zoell's Estate,* the Pennsylvania Supreme Court had before it the following question:

> What are the inheritance rights of a child adopted in New Jersey, in the estate of a natural collateral relative, dying intestate, domiciled in Pennsylvania, whose entire estate is located here, where the New Jersey decree of adoption

> reserved certain inheritance rights to the adopted child? *Id.* at 31.

In discussing the full faith and credit clause of the Federal constitution, the Pennsylvania Supreme Court in *Zoell* stated that:

> The full faith and credit clause of the Federal Constitution, Art. 4, s. 1, requires us to recognize only her status as adopted. What we are dealing with is a question of descent, not one of status. The state of the place of the property, in denying him the right to inherit, is not denying his status as an adopted child, nor even the incident of that status (for rights of inheritance as to property located in the state of adoption are still recognized), but is merely giving effect to its statute of inheritance prescribing the class of persons who shall or shall not take property there located. *Id.* at 31-32.

It is this very distinction which the Supreme Court of Missouri repeated in its opinion below.

> Full-faith-and-credit principles and issues of comity require no more than that Missouri recognize Alan and Cheryl as "adopted children." Missouri is not, however, required to treat them any differently than any two children adopted in Missouri. Missouri recognizes the status of their Colorado adoption. That status does not affect the incidents of adoption provided by Missouri law. (App. 7).

If the recognition of the status of an adoption does not give it the same effect as in the state of adoption, has the status of the adoption been fully recognized? While the question of inheritance is a separate one to be governed only by Missouri law; Missouri must give recognition to

the Colorado decree of adoption concerning the status of the adopted child as a child. There is no question but that the law of Missouri will apply in determining descent and distribution, or in this case, the rights to a fee-tail remainder; but in applying Missouri law, the question arises as to whether Alan Ochs and Cheryl Easter must be seen as children of their adoptive parents, plain and simple, or as *adopted* children.

Yet the statute authorizing the Colorado adoption, and the decree of adoption itself, indicate that these adopted children are to be treated in all respects as if natural born to their now adoptive parents.

The issue is not of how Missouri may fashion its laws of inheritance, but of how the law, whatever it may be, is applied. Does the receiving state, in this case, Missouri, acknowledge the status of the parties as children of their adoptive parents, in plain accord with the decree, or may it look behind the decree, and append the label and stigma of *adopted* children, and thus apply its own law in a different manner.

In reaching its decision, the *McGeehee* Court relied on the principle that "[a state] is the sole mistress of the devolution of [her] land by descent". 237 U.S. at 614. The issue is not this choice of law rule, nor is the law of inheritance in need of review, for one state may not impose upon her sister state a policy that any particular class of persons must inherit. Rather, under Full Faith and Credit, what *effect* does the prior decree of adoption have on the *facts* to which the law of inheritance is applied. In *Fauntleroy v. Lum*, 210 U.S. 230 (1908), a Missouri court refused to enforce a foreign judgment, since at

that time commodity futures contracts were unenforceable and illegal. In resolving the question, the court relied on the words of Chief Justice Marshall:

> that the judgment of a state court should have the same credit, validity, and *effect* in every other court in the United States, which it had in the state where it was pronounced.

Id. (quoting *Hampton v. McConnell,* 3 Wheat. 324). It is this notion that Full Faith and Credit will permit the separation of the status of adoption and the incidents of adoption, as expressed in *McGeehee,* and *Estate of Zoell, supra,* which should be reexamined, especially in light of our understanding of Equal Protection has announced in *Levy, Glona,* and *Trimble, infra,* and which warrants this Court's attention. Missouri has the right to establish the class of persons which have rights of inheritance within its borders. However, once that class is established, all members of that class must be treated equally. Once Missouri allows a right of inheritance to children, it must treat all *children* the same, whether brown-eyed or blue-eyed, boy or girl, black or white, natural-born or adopted.

The separation of status as an adopted child and the incidents thereof (one of which is an 'heir of the body' and thus a remainderman) confuses the essence and accidents of adoption. The essence of adoption, status as a child, cannot be present without the accidents thereof, that is, the rights incidental to that status. The theory that inheritance rights are properly divisible from status is not consonant with reality, and merely attempts to end-run the requirements of Full Faith and Credit.

In *Slattery v. Hartford-Connecticut Trust Co.*, 161 A. 79 (Conn. 1932), the court was dealing with distribution of property involving an adopted child and a widow. Under Connecticut law, the adopted child could inherit from adopting parents or relatives but not from his natural parents. Under Michigan law, the state where he was adopted, the adopted child could inherit from either set of parents.

In determining that the child was entitled to inherit from his natural parents, because of the Michigan adoption, the Court looked to see if there was anything that would be injurious to public laws or violate positive laws of Connecticut.

> There mere fact that to give effect to the restrictive nature of the Michigan statute of adoption might result in allowing a child adopted under it greater rights than he would have if adopted under our own law is not ground for refusing to uphold those rights. Similar provisions are to be expected, but even if a foreign law gives a right which ours does not; or bases the right on a different theory of justice, it in no way establishes that we are right and the foreign state wrong. We are not at liberty to refuse the enforcement of the foreign law in order to suit our own view of what is fair and right under the stated circumstances. Our courts do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal.

Id. at 80.

Contrary to the viewpoint of *Zoell's Estate*, supra, the Supreme Court of New Mexico recognized the status and the incidents of a Colorado adoption in *Delaney v. First National Bank*, 386 P.2d 711 (N.M. 1963), and that the Colorado adoption decree was entitled to full faith and credit, even though such an adoption was not possible under New Mexico law, *Id.* at 714, and that this was consistent with "the public policy of placing an adopted child on a level with natural children". *Id.* at 715.

There is nothing offensive to Missouri public policy to bar recognition of the effect of the Colorado adoption statute. In fact, the result achieved by granting full faith and credit to the Colorado decree is closer in spirit to advance the public policy of family unity, and of encouraging adoptions, to relieve the State of the burden of minor wards. Additionally, *Fauntleroy* indicates that a sister state's decree may not be rejected merely because it is contrary to the policy of the receiving state.

The Missouri adoption statute, as it existed at the time of the execution of Adolph Ochs' will distinguished between natural born and adoptive children, a distinction based on parentage. It read as follows:

> . . . Said child shall thereafter be deemed and held to be for every purpose, the child of its parent or parents by adoption, as fully as though born to them in lawful wedlock. . . .
>
> . . . Provided, however, that, neither said adopted child nor said parents by adoption shall be capable of inheriting from or taking through each other property expressly limited to heirs of the body of such child or parent by adoption.
>
> Section 14079, RSMo (1929). (App., infra).

The focus in this statute is placed on the manner by which adopted children attained their status as children. No such limitation is placed on illegitimate children. This distinction of adopted children furthers no compelling state interest. Rather, it runs contrary to the State's interest in preserving family unity. Petitioner suggests that it created a suspect classification of adopted children, and should only be permitted to stand if it advanced a compelling state interest, and additionally, that the classification of adopted children bears no rational relationship to a legitimate state interest. The effect of this statute is to disenfranchise adopted children. They are treated as second class citizens, and deprived of an important civil right, the right of remainder interests, based on parentage alone.

In the case of *Levy v. Louisiana*, 391 U.S. 68 (1968), this Court held it unconstitutional to deny illegitimate children the right to recover for wrongful death of a parent. In *Glona v. American Guarantee and Liability Insurance Company*, 391 U.S. 73 (1968) this Court invalidated the corollary: the denial to a parent of the right to recover for an illegitimate child's wrongful death. Nine years later, this Court in *Trimble v. Gordon*, 430 U.S. 762 (1977) examined whether an Illinois statute which differentiated between legitimate and illegitimate children as to rights of inheritance was valid against the requirements of equal protection. The Court concluded it was not. Although "classifications based on illegitimacy fall in a realm of less than strictest scrutiny" yet "the scrutiny is not a toothless one" and "requires, at a minimum, that a statutory classification bear some rational relationship to a legitimate state purpose". *Id.* at 766-67.

The observation of the *Trimble* court to the lack of relationship of the classification as illegitimate to the effects of the statute in diminished rights of inheritance is equally applicable to the question here of the classification as adopted children and relationship of such a classification to the ability to take as remaindermen.

> [I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth . . .

Id. at 769-70 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)).

The parent-child relationship that is at the basis of custodial visitation rights is the same parent child relationship involved in a fee-tail devise. Both have their fountainhead in the parent-child relationship. Nor is there anything intrinsic in remainder interests vis-a-vis visitation to give a compelling state interest (or even a rational basis) for denying unconstitutional protection to the one, while granting it to the other. *State ex rel Busch v. Busch*, 776 S.W.2d 374 (Mo. banc 1989):

> It used to be thought that the father of an illegitimate child had no custodial rights. Now the father's rights are constitutionally protected, but no statutory procedure is provided.
>
> *Id.* at 380.

The propagation of illegitimate children can hardly be seen as a contribution to the good of society. The

Constitution nonetheless recognizes the parent-child relationship which does exist, as well it should. Such recognition does support a compelling state interest. In giving recognition to such relationship, the law hopes to foster good family ties and support, which is in the interest of the state. This Constitutional protection is granted even though no attempt has been made by the parents to avail themselves of the law's protection.

Quite the contrary appears to be the case here. The adoption of children is a worthy social goal, as it provides a family and support, which are otherwise missing. Adoptive parents undertake time and expense to secure this legal relationship, a parent-child relationship, with their adoptive children. Yet seemingly the law refuses to give full effect to this relationship, at least as concerns fee-tail remainder, despite the efforts of parents to avail themselves of the law's benefits and protection.

The recognition of the parent-child relationship between adoptive parents and adopted child furthers a compelling state interest. It promotes the taking in of children, who would otherwise be wards of the state, in addition to fostering family ties and support. The former Missouri statute discriminates against adopted children on the basis of their adoption. Such classification not only promotes no compelling state interest, it is contrary to the very state interest the adoption itself sought to promote, and thus without a rational relationship to a legitimate state purpose.

First, the decision of the Supreme Court of Missouri is in apparent conflict with that of the Supreme Court of Connecticut in *Slattery*, and with that of the Supreme

Court of New Mexico in *Delaney*, concerning the application of Full Faith and Credit to adoption decrees. Additionally, the rationale of this Court in McGeehee should be re-examined in light of the holdings of *Levy*, *Glona*, and *Trimble*.

Second, to deny a remaindermen's interest on the basis of status as an adopted child is inconsistent with the doctrine of Equal Protection as expressed in this Court's opinion in *Levy*, *Glona*, and *Trimble*. A writ of certiorari should issue to determine whether a classification based on adoption is a constitutionally permissible one, and whether adopted children should enjoy the same status and protection as natural born children or illegitimate children.

CONCLUSION

For the foregoing reasons, a writ of certiorari should issue to review the opinion and judgment of the Supreme Court of Missouri in this cause, and for such other and further relief as to the Court seems just and proper.

Respectfully submitted,

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In re: Cheryl Jean Easter vs. Margaret Ochs, Personal Representative of the Estate of Alan Ochs, et al.
Supreme Court No. 74619

Dear Counsel:

This is to advise that the Court this day handed down the enclosed opinion in the above entitled cause.

Motions for rehearing must be filed within 15 days from this date (Rule 84.17). The provisions of Rule 44.01(e) do not apply to extend the time for filing motions for rehearing.

Very truly yours,

THOMAS F. SIMON

/S/ Mary Elizabeth McHaney
Mary Elizabeth McHaney
Deputy Clerk, Court en banc

/csm

Enclosure

SUPREME COURT OF MISSOURI
en banc

CHERYL JEAN EASTER, Plaintiff-Respondent, vs. MARGARET OCHS, Personal Representative of ESTATE OF ALAN OCHS, et al., Defendants-Appellants.	)	Dulicate Of Filing on Sep 22, 1992 In Office Of Clerk Supreme Court No. 7419

APPEAL FROM THE CIRCUIT COURT
OF PERRY COUNTY
Honorable A. J. Seier, Judge

Cheryl Jean Easter sued to quiet title to four Missouri farms that she and her brother, Alan Ochs, claimed. When Alan later died, his heirs – the Ochs family – became the defendants. The circuit court granted summary judgment for Cheryl on stipulated facts. Because a state statute is alleged to violate the equal protection and full-faith-and-credit clauses of the United States Constitution, this Court has exclusive appellate jurisdiction. Mo. Const., Art. V, § 3. The decision of the circuit court is affirmed.

On June 28, 1937, Adolph Ochs made a last will, which included:

> 7th. I devise to my son, Erwin Ochs, of Colorado, . . . [the] "Mary Knox Farm" in fee; and I also devise to said Erwin Ochs for and during his natural life with remainder to his bodily heirs . . . the "Floyd Knox Farm"; and I further devise to him the remainder after my wife's life estate in the Christian Ochs farm . . . to him and his bodily heirs.

. . . .

> 9th. The 125 acres in said Bois Brule Bottom . . . I devise as follows: . . . the remaining one-third to my son, Erwin Ochs, and the heirs of his body.
>
> 10th. I bequeath . . . all the rest and residue of my property . . . in equal parts to my wife and my said children, my wife taking a child's part therein.

Adolph died on July 4, 1937. His spouse, Rosetta, died intestate on January 10, 1943. Adolph and Rosetta had three children – Erwin, Esther, and Oneida. All parties agree that Esther Weinrich and the heirs of Oneida Bergman have filed quitclaim deeds surrendering their interests in the four farms being contested, and are not necessary parties.

Erwin and his spouse, Stella, had no natural children; they did adopt Cheryl and Alan on January 15, 1947, in Colorado. Erwin's will left all his property to Stella. After Erwin's death in 1976, Stella conveyed to Cheryl, by quitclaim deed, the Christian Ochs farm. Stella died on January 15, 1986. Her will devised all her real estate – including her claim to the remaining three farms – to Cheryl, and expressly disinherited Alan.

Two questions determine who owns these farms. First, what did Adolph intend by the language of his will? Second, to the extent that *§ 14079 RSMo 1929* illuminates Adolph's intent, is the United States or Missouri Constitutions violated?

The question who owns the farms is primarily a question of testator's intent in his will. Faced with a

similar case, this Court held " . . . *it is* not a question of the right of an adopted child to inherit, but *simply a question of the testator's intention with respect to those who are to share in the estate.*" *First National Bank of Kansas City v. Sullivan*, 394 S.W.2d 273, 281 (Mo. 1965), citing *Commerce Trust Company v. Weed*, 318 S.W.2d 289, 298 (Mo. 1958) (ellipsis and emphasis in *Sullivan*). For this purpose, Missouri assumes that testators know and understand the meaning and effect of the terms used in their wills as defined under Missouri law. *Zombro v. Moffett*, 44 S.W.2d 149, 152 (Mo. 1931); see also *Shaw v. Wertz*, 369 S.W.2d 215, 217 (Mo. App. 1963).

The question remains: should the meaning of the terms in the will be determined at the time the will is executed, or at the time its terms take effect? Two apparently conflicting cases address the issue.

The first, *Weed*, looks to the law at the time the provisions of the will take effect: "the testator intended that the trust assets were to vest in and be divided among those persons who were his lineal descendants on the termination date and that the qualifications of those who were to make up that class were to be judged according to their situation on that date." 318 S.W.2d at 298.

The second, *Sullivan*, looks to the law at the time the will is executed. 394 S.W.2d at 280-81 *Sullivan* restates the traditional rule in Missouri – the meaning of terms in a will are determined by the law at the time that the will is made. *Id.* at 281. *Sullivan* distinguishes *Weed*, as have subsequent decisions. *Id.* at 281 & n. 5; *Papin v. Papin*, 445 S.W.2d 350, 353 (Mo. App. 1969). *Weed* is limited to the principle that a Missouri testator can expressly tie a will

to the law other than that existing at the date of execution.

In 1937 – at the time of Adolph's will – the law of the testator's domicile (Missouri) governed the construction of the will. *Zombro*, 44 S.W.2d at 152. Missouri law in 1937 clearly defined the terms of Adolph's will.

First, Adolph devised one farm – the Mary Knox farm – to Erwin in fee simple. Adolph devised the remainder in another farm – the Floyd Knox Farm – to Erwin's bodily heirs. Adolph devised the other two farms – the Christian Ochs farm and the Bois Brule Bottom – to Erwin using the language of fee tails – respectively, "to him and his bodily heirs" and to "Erwin Ochs and the heirs of his body." Missouri abolished fee tails long before 1937. A devise using the language of fee tails creates: 1) a life estate in the named devisee; 2) a remainder in the heirs of the body of the named devisee; and 3) a reversion to the devisor. *§ 3108 RSMo 1929* (currently codified at *§ 442.470 RSMo 1986); Davidson v. Davidson*, 167 S.W.2d 641 (Mo. 1943); William F. Fratcher, *Trusts and Succession in Missouri – 1957*, 23 Mo. L. Rev. 467, 469-70 (1958).

Second, the phrase "heirs of the body" specifically excluded adopted children under *§ 14079 RSMo 1929* (repealed 2 Laws of Mo. 1947, at 213, 217).[1] *See also* Willard L. Eckhardt, *Work of Missouri Supreme Court for*

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[1] "[N]either said adopted child nor said parents by adoption shall be capable of inheriting from or taking through each other property expressly limited to heirs of the body of such child or parent by adoption." *§ 14079 RSMo 1929.*

1953 – Property, 19 Mo. L. Rev. 335, 337 (1954). Other phrases – such as "issue" – specifically included adopted children. *Kindred v. Anderson*, 209 S.W.2d 912 (Mo. 1948) (citing pre-1937 cases).

Based on Missouri law, Adolph is presumed to have known that using the phrase "heirs of the body" excludes any adopted children from taking the remainder. By the plain language of his will, Adolph excluded Cheryl and Alan from taking a remainder. Thus, there were no heirs of the body; the remainder fails; and the three "fee-tailed" farms pass as reversions, through the residuary clause of Adolph's will.

II.

Second, does the use of § *14079* to illuminate Adolph's intent violate the United States or Missouri Constitutions? The Ochs family attacks § *14079* in two ways, both of which are legally irrelevant.

First, the Ochs family claims a violation of the full faith and credit clause. U.S. Const. art. IV, § 1. This claim takes two main variations: 1) the full-faith-and-credit limits this Court to defining adoptee's rights (and the Missouri phrase "heirs of the body") solely for Missouri adoptions, while Colorado law controls adoptee's rights for a Colorado adoption; and 2) if § *14079* is not limited to Missouri adoptions but also controls Colorado adoptions, it violates the full faith and credit clause.

The first variation clearly contradicts Missouri law. Missouri presumes a testator knows and uses the law of his domicile and that the will was drafted with that law

in mind. *Zombro*, 44 S.W.2d at 152. Otherwise, some adoptees would inherit under a will, while others would not depending on the state of adoption causing constant, unpredictable change in Missouri wills and land titles.

The only role of § *14079* in this case is to explain what Adolph meant by "heirs of the body." This statute does not establish the rights of Alan. Those rights are established by Adolph's will. The statute merely provides the meaning of the phrase "heirs of the body" when no further definition is provided by the testator. Adolph clearly used language that excluded adopted children, but the statute did not compel him to use this language.

Full-faith-and-credit principles and issues of comity require no more than that Missouri recognize Alan and Cheryl as "adopted children." Missouri is not, however, required to treat them any differently than any two children adopted in Missouri. Missouri recognized the status of their Colorado adoption. That status does not affect the incidents of adoption provided by Missouri law. Nor does it alter construction of a will.

The second variation was decided against the Ochs family (before the will was even written). *Hood v. McGeehee*, 237 U.S. 611 (1915). The United States Supreme Court has not addressed this issue since *Hood*, nor has it given any indication that *Hood* is no longer valid. Therefore, this Court is compelled to deny this claim.

Second, the Ochs family alleges a violation of both the state and federal equal protection and due process clauses. U.S. Const. amend. XIV, § 1; Mo. Const. art I, §§ 2, 10. Adolph's use of § *14079* is not state action. Adolph is clearly a private actor. *See Edmonson v. Leesville*

Concrete Co., 111 S. Ct. 2077, 2083 (1991); *Lugar v. Edmonson Oil Co., Inc.*, 457 U. S. 922, 937 (1982). Likewise, state action is required to implicate the state equal protection and due process clauses. *First National Bank of Kansas City v. Danforth*, 523 S.W.2d 808 (Mo.), *cert. denied, sub nom Sutt v. First National Bank of Kansas City*, 421 U.S. 992 (1975), and *sub nom Lakeside Hospital Ass'n v. First National Bank of Kansas City*, 421 U.S. 1016 (1975).

As these constitutional provisions do not restrict the acts of this testator, he was free to devise his property as he wished. The will clearly indicates his intent to exclude Cheryl and Alan from taking the three "fee-tailed" farms under the remainder provisions.

III.

As a result of Adolph's will, Erwin had a fee simple in the Mary Knox farm, a life estate in the other three farms, and a reversion interest in those same three farms. At Erwin's death, the remainder failed because he had no bodily heirs. By Erwin's will, the fee simple and the three reversions passed to Stella; the three "fee-tailed" farms passed in fee simple to Stella, the holder of the reversion interests. Stella gave one farm to Cheryl, and later devised the remaining three to Cheryl. Cheryl thus owns all four farms, to the exclusion of the Ochs family.

The judgment below is affirmed.

Duane Benton, Judge

All concur.

IN THE SUPREME COURT OF MISSOURI

CHERYL JEAN EASTER, Plaintiff/Respondent, vs. MARGARET OCHS, Personal Representative of Estate of Alan Ochs, et al, Defendants/Appellants.	)	No. 74,619

MOTION FOR REHEARING

Come now Appellants, Margaret Ochs, et al., by and through their attorneys, Lowes & Drusch of Cape Girardeau, and move this Court to grant rehearing in the above cause and state as follows:

This Court has overlooked material matters of law and fact concerning former statute RSMo § 14079 and the adoption of Alan Ochs and Cheryl Easter. The opinion of this Court relies on § 14079 to show what the intent of Adolph Ochs was in using the phrase "heirs of the body" in his will, stating:

> The only role of § 14079 in this case is to explain what Adolph meant by "heirs of the body". . . . The statute merely provides the meaning of the phrase "heirs of the body" when no further definition is provided by the testator.

Slip op. at 6. The opinion correctly observes that "a testator knows and uses the law of his domicile and that the will was drafted with that law in mind". *Id.* This being so, Adolph must be presumed to know the entire statute, not merely part of it. Former § 14079, RSMo read:

> Consequences of Adoption. *When a child is adopted in accordance with the provisions of this article,* all legal relationship, and all rights and duties, between such child and its natural parents shall cease and determine. Said child shall thereafter be deemed and held to be for every purpose, the child of its parent or parents by adoption, as fully as though born to them in lawful wedlock. Said child shall be entitled to proper support, nurture and care from said parents by adoption and shall be capable of inheriting from, and as the child of said parents as fully as though born to them in lawful wedlock. Said parent or parents by adoption shall be entitled to the service, wages, control, custody and company of said adopted child, and shall be capable of inheriting from, and as the parents of, said adopted child as fully as though the child had been born to them in lawful wedlock. Provided, however, that, neither said adopted child nor said parents by adoption shall be capable of inheriting from or taking through each other property expressly limited to heirs of the body of such child or parent by adoption. (emphasis added).

Id. (emphasis added). Thus, the statute on its face, and by its own terms, *separate and apart from any Constitutional considerations,* is limited in its application only to adopted children who were the subject of a Missouri adoption proceeding. If Adolph is presumed to have known § 14079, as he must, then it follows, *a fortiori,* that he was presumed to know that the statute was limited in its application to children who were the subject of a Missouri adoption proceeding. Alan and Cheryl were adopted in a proceeding in Colorado. Slip op. at 2. This

distinction is based on the words of the statute itself, *independent* of any concerns of Full Faith and Credit, Due Process, or Equal Protection. Thus, the opinion overlooks this material matter of law, and misapplies the law to the facts.

WHEREFORE, Appellants pray that rehearing be granted in this cause, or that the opinion be modified, and for such other and further relief as to the Court seems just and proper.

Respectfully submitted,

LOWES & DRUSCH
By: /s/ David J. Roth II #36648
2913 Independence
Cape Girardeau, MO
63701
314-335-7200
ATTORNEYS FOR
APPELLANTS

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in the United States mail at Cape Girardeau, MO. this 29th day of Sept. 1992.

Signed /s/ David J. Roth

CLERK OF THE SUPREME COURT
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October 27, 1992

Mr. David J. Roth II
Mr. Albert C. Lowes
Mr. Thomas Maguire
2913 Independence Street
Cape Girardeau, Missouri 63701

In re: Cheryl Jean Easter vs. Margaret Ochs, as Personal Representative of Estate of Alan Ochs, et al.
Supreme Court No. 74619

Dear Counsel:

Please be advised that the Court this day entered the following order in the above-entitled cause:

"Appellants' motion for rehearing overruled."

Yours very truly,

THOMAS F. SIMON

/S/ Mary Elizabeth McHaney
Mary Elizabeth McHaney
Deputy Clerk, Court en banc

/csm

cc: Dale Gerecke & Craig Billmeyer

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
SOUTHERN DIVISION

CHERYL JEAN EASTER, Plaintiff/Respondent, vs. MARGARET OCHS, as Personal Representative of Estate of Alan Ochs, et al. Defendants/Appellants.	No. 60116 Appeal from the Circuit Court of Perry County Hon. A. J. Seier OPINION FILED: February 25, 1992

In this quiet title action, Margaret Ochs, as personal representative of the Estate of Alan Ochs, and all the children and surviving heirs of Alan Ochs (appellants), appeal from a summary judgment quieting title to four tracts of land in the name of respondent, Cheryl Jean Easter.

The parties filed a joint stipulation of facts. Adolph Ochs executed his will on June 28, 1937. Adolph[1] died July 4, 1937. He was survived by his wife, Rosetta; two daughters, Oneida Bergman and Esther Weinrich; and a son, Erwin. In his will, Adolph devised to Erwin in fee, a tract of land referred to as the "Mary Knox Farm." Adolph also devised the following:

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[1] We refer to individuals by their first name for ease of reading, and not out of disrespect.

> to Erwin Ochs for and during his natural life with remainder to his bodily heirs, 86 acres of land . . . known as the "Floyd Knox Farm";
>
> * * *
>
> to [Erwin] the remainder after my wife's life estate in the Christian Ochs farm of 42 acres on Highway 25 to him and his bodily heirs.
>
> * * *
>
> The 125 acres in said Bois Brule Bottom . . . I devise as follows: One-third thereof to Oneida Bergman in fee; one-third thereof to Esther Weinrich in fee; and the remaining one-third to my son, Erwin Ochs, and the heirs of his body.

The residuary clause of Adolph's will left "all the rest and residue of my property, not herein before specifically devised or bequeathed, in equal parts to my wife and my said children, my wife taking a child's part therein."

Erwin and his wife, Stella, adopted two children, Alan Ochs and respondent, on January 15, 1947, pursuant to the laws of Colorado. Erwin and Stella had no natural born children. Erwin died September 11, 1976. Through his will, Erwin left his entire estate to his wife.

On February 23, 1984, Stella conveyed the "Christian Ochs Farm" by quit claim deed to respondent. Stella died testate January 15, 1986, survived by her two adopted children. Stella devised all her real estate to respondent, and specifically disinherited Alan.

Respondent filed this action against Alan, seeking to quiet title to four tracts described in Adolph's will as the

"Mary Knox Farm," the "Floyd Knox Farm," the "Christian Ochs Farm," and the "Bois Brule Bottom." Alan counterclaimed, seeking quiet title to the tracts, damages for conversion of rent respondent received off the properties, and an accounting of such rents.

Alan subsequently died, and the court substituted appellants as party defendants. Appellants and respondent filed a joint motion for summary judgment requesting a determination whether, as a matter of law, "Alan Keith Ochs, as the adopted son of Erwin Ochs and Stella Ochs, his wife, can claim an interest in the subject real property."

In her memorandum of law in support of the motion, respondent asserted because Adolph devised the "Mary Knox Farm" to Erwin, Stella took the property in fee under Erwin's will, and respondent took the property in fee as the devisee under Stella's will. With regard to the remaining three tracts, respondent argued that under *Davidson v. Davidson*, 167 S.W.2d 641 (Mo. 1943), and § 442.470 RSMo 1986, Adolph's devise to Erwin and the "heirs of his body" was a fee tail creating a life estate in Erwin with a contingent remainder in fee simple to Erwin's bodily heirs, and a reversionary interest in Adolph. Thus, respondent argued, when Erwin died in 1976, his statutory life estate ended; because no natural born child survived, the contingent remainder failed; the interest in the "Floyd Knox Farm," the "Christian Ochs Farm," and the "Bois Brule Bottom" reverted to Adolph; those tracts passed to the children of Adolph through the residuary clause of Adolph's will; and Erwin's interest in those tracts passed through Erwin's will to Stella; and through Stella's will to respondent.

In their memorandum of law, appellants argued they have an interest in the property at issue, because at Erwin's death Alan and respondent were entitled to take the property as remaindermen and the property did not revert to Adolph for distribution under the residuary clause of his will. The trial court entered summary judgment in favor of respondent and adjudged respondent to be the owner of the four tracts in fee simple absolute.

In the first of their three points, appellants contend the trial court erred in entering summary judgment in favor of respondent, because Adolph showed no intent in his will to exclude adopted grandchildren as remaindermen under a fee-tail devise. Appellants argue that in devising property to Erwin and "the heirs of his body," Adolph did not intend to exclude adopted grandchildren as fee-tail takers.

Initially, we note that Adolph devised the "Mary Knox Farm" to Erwin in fee. At Erwin's death, that property passed under Erwin's will to Stella in fee. Therefore, appellants have no interest in that property under their theory that Alan took as a fee-tail remainderman. The trial court did not err in entering summary judgment in favor of respondent with regard to the "Mary Knox Farm."

As to the remaining three tracts, under the general rule, "whether an adopted child is embraced within the meaning of a described class of beneficiaries in a will is governed by the law in force at the time the will or other instrument was executed." *First Nat'l Bank v. Sullivan*, 394 S.W.2d 273, 281 (Mo. 1965). In 1937, when Adolph executed his will, Missouri law provided that "neither said

adopted child nor said parents by adoption shall be capable of inheriting from or taking through each other property expressly limited to heirs of the body of such child or parent by adoption." § 14079 RSMo 1929. Appellants argue the search is not into the law of 1937, but the intention of Adolph Ochs. In support of this argument, appellants rely on the statements in *Sullivan* that:

> In construing the rights of an adopted child to take under a will " ' * * * *it is* not a question of the right of an adopted child to inherit, but *simply a question of the testator's intention with respect to those who are to share in his estate.'* "
>
> * * *
>
> It is fundamental that it is testator's intention at the time of the execution of the instrument . . . that we seek to determine. (emphasis original).

Sullivan, 394 S.W.2d at 281 (quoting *Commerce Trust Co. v. Weed*, 318 S.W.2d 289, 298 (Mo. 1958)). Thus, appellants assert, they have an interest in the property, because nothing in Adolph's will indicates he intended to exclude adopted grandchildren from inheriting from Erwin under the fee tail.

Appellants' assertion ignores the *Sullivan* court's intervening statement that "[a] testator's intention with respect to who shall be included or excluded from a designated class may be altogether different from that which the law provides. A different intention will be respected, as long as it does not violate public policy." Because the law in force at the time Adolph executed the will excluded Alan and respondent from the class of fee-

tail remaindermen, that law governs unless Adolph indicated an intent to include adopted grandchildren in the fee-tail devise.

Appellants argue that unlike the testator in *Sullivan*, Adolph was not an experienced attorney and he did not use the term "heirs at law" anywhere in his will. Thus, they maintain, "no implied distinction of meaning by the term 'heirs of his body' may be drawn." The testator, however, is presumed to know the meaning and legal effect of the words used. *Shaw v. Wertz*, 369 S.W.2d 215, 217-18 (Mo. App. 1963). Accordingly, it is presumed that in using the words, "the heirs of his body," Adolph knew he was limiting membership in the class of fee-tail remaindermen to blood relatives. Adolph devised property to his wife, daughters and son; he made no devises or bequests to anyone outside his bloodline. When Adolph executed his will in 1937 there were no adopted grandchildren before him to consider in disposing of his property; however, we must presume that Adolph was aware of the possibility Erwin might adopt children in the future. *See Sullivan*, 394 S.W.2d at 282. Therefore, Adolph could have specifically provided for property to pass to adopted grandchildren, but he did not.

We find no evidence Adolph intended to include adopted grandchildren in the class of fee-tail remaindermen entitled to take the property at Erwin's death. The law in force in 1937 prohibited Alan and respondent from taking the property as fee-tail remaindermen. Thus, at Erwin's death, the tracts Adolph devised to Erwin, excluding the "Mary Knox Farm," reverted to the grantor for distribution through the residuary clause of Adolph's will. Accordingly, appellants have no interest in that

property, and the trial court did not err in entering summary judgment in favor of respondent. Point one is denied.

In their second point, appellants contend the entry of summary judgment in favor of respondent was erroneous, because the trial court should have given the adoption full faith and credit "to the same extent said adoption would be recognized by Colorado courts, in that under Colorado law respondent and [Alan] were declared the same as natural born children for all intents and purposes, and thus would constitute heirs of the body, and would be entitled to the fee-tail remainder."

Respondent contends the trial court correctly recognized the "status" of the Colorado adoption, while giving appropriate effect to Missouri's former statute limiting the class of persons entitled to inherit property within this state. Respondents rely on *Hood v. McGehee*, 237 U.S. 611, 35 S.Ct. 718 (1915). In *Hood*, the deceased adopted two children in Louisiana. At his death, deceased owned real property in Alabama. Alabama law prohibited children adopted by proceedings in other states from taking devises of real property located in Alabama. The adopted children filed a quiet title action in Alabama. They asserted they were entitled to the land under an alleged devise from the deceased and Alabama was required to give the Louisiana adoption full faith and credit. In upholding the lower court's dismissal of the action based on Alabama's law excluding children adopted in other states, the United States Supreme Court held:

> The construction does not deny the effective operation of the Louisiana proceedings, but simply reads the Alabama statute as saying that,

> whatever their relation to the deceased by virtue of what has been done, the law does not devolve his estate upon them. There is no failure to give full credit to the adoption of the plaintiffs, in a provision denying them the right to inherit land in another state. Alabama is the sole mistress of the devolution of Alabama land by descent.

Id. at 615.

Appellants, citing RESTATEMENT (SECOND) OF CONFLICTS § 290 comment b (1971), invite us to follow the minority view that an adopted child's inheritance rights "pertain to status itself and hence are governed by the local law of the state where the adoption was granted." We decline appellants' invitation. In determining an adopted child's inheritance rights to real property, we find the better reasoned approach is to apply the law of the situs. *Hood*, 237 U.S. 611; *see* RESTATEMENT (SECOND) OF CONFLICTS §§239 and 290 comment b (1971).

Thus, in recognizing the status of Alan and respondent as adopted children of Erwin, the trial court afforded full faith and credit to the adoption decree of the Colorado court, and the trial court correctly applied Missouri law in determining whether Alan and respondent were entitled to take the real property located in Missouri as remaindermen at Erwin's death.

Mutual Life Ins. Co. v. Benton, 34 F. Supp. 859 (W.D. Mo. 1940), relied upon by appellants does not mandate a different result. The issue before the *Benton* court was whether, under the facts presented, the equity court should or could give the defendant the status of an adopted daughter of the deceased pursuant to an equitable contract of adoption allegedly entered into in Rhode

Island. *Id.* at 860-64. The issue of an adopted child's right to inherit was not before the court; however, the court stated in dicta: "Again, the status of an adopted child and his capacity to inherit are governed by the laws of the forum authorizing the adoption, ... " *Benton* is not dispositive of the issue presented in this case.

Moreover, we are not persuaded by appellant's argument that former §9616(b) RSMo 1946 (now §453.170 RSMo 1986, as amended) dictates a different result. Former § 9616(b) provided:

> Any person adopted pursuant to the laws of other States of the Union, whenever the adopted person's rights are affected or determined by the laws of this State, shall, from the date of said adoption, be deemed and held to be for every purpose the lawful child of its parent or parents by adoption as fully as though born to them in lawful wedlock and such adoption shall have the same force and effect as adoption under the provisions of this chapter, including all inheritance rights.

As stated in our discussion under point one, the law in force when a will is executed governs whether an adopted child is included in the meaning of a described class of beneficiaries. *See Sullivan,* 394 S.W.2d at 281. Former §9616(b) was enacted in 1946, one year prior to the change in Missouri law permitting an adopted child to inherit under a fee-tail remainder. Even if we apply former §9616(b) to the facts of this case, Alan and respondent, as adopted children under the laws of another state, are afforded those inheritance rights a child adopted under Missouri law would have been granted. As previously noted, Missouri law in effect in 1937 expressly

denied adopted children the right to take real property from their adoptive parents as fee-tail remaindermen.

Thus, in entering summary judgment in favor of respondent, the trial court did not fail to give full faith and credit to the Colorado adoption. Rather, the trial court acknowledged the status of Alan and respondent as Erwin's adopted children, and the court extended to them all inheritance rights a child adopted under Missouri law would have received under the same facts. Point two is denied.

In their final point, appellants contend the trial court erred in entering summary judgment in favor of respondent, because adopted children "are members of a suspect classification, and denial of their right to inherit under former [§14079 RSMo 1929] constitutes discrimination on the basis of parentage and forwards no compelling state interest" in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 10 of the Missouri Constitution.

To be preserved, a constitutional question must be raised at the first opportunity. *In re Harkins*, 548 S.W.2d 583, 585 (Mo. App. 1977). Appellants first raised their constitutional challenge to the statute in their memorandum of law in support of the motion for summary judgment. Respondent does not contend appellants failed to timely raise their constitutional challenge to the statute. Moreover, as in *Winston v. Reorganized School Dist.*, 636 S.W.2d 324 (Mo. banc 1982), appellants in this case sufficiently preserved their constitutional challenge to the statute, "because the purpose of the rule requiring that constitutional issues be raised at the earliest opportunity,

to prevent surprise to the opposing party and permit the trial court an opportunity to fairly identify and rule on the issue, was served here, ... " *Id.* at 327.

Cases involving the constitutionality of a Missouri statute fall within the exclusive jurisdiction of our supreme court. MO. CONST. art. V, §3. "[T]o deprive the Court of Appeals of its jurisdiction, the asserted constitutional question must be real and substantial and not merely colorable." *Harkins,* 548 S.W.2d at 585. Although adoption, like illegitimacy, may not be sufficiently analogous to those personal characteristics which have been held to be suspect when used at the basis of statutory differentiations, *See Trimble v. Gordon,* 430 U.S. 762, 767, 97 S.Ct. 1459, 1463 (1977); a statutory classification must, at a minimum, "bear some rational relationship to a legitimate state purpose." *Id.* at 766, 97 S.Ct. at 1463; *Weber v. Aetna Casualty & Sur. Co.,* 406 U.S. 164, 172, 92 S.Ct. 1400, 1405 (1972). The challenged language in former §14079 was repealed in 1948. 1947 Mo. Laws V. II p. 213; *see* §453.090 RSMo 1986. The repealed statute, however, continues to affect the rights of some adopted children, as demonstrated by the present case. Thus, the constitutional question raised by appellants is real and substantial. Accordingly, we transfer this case to the Missouri Supreme Court.

/S/Clifford H. Ahrens
CLIFFORD H. AHRENS, Judge

Carl R. Gaertner, P.J. and Kent E. Karohl. J. concur.

IN THE SUPREME COURT OF MISSOURI

CHERYL JEAN EASTER, Plaintiff/Respondent, vs. MARGARET OCHS, as Personal Representative of Estate of Alan Ochs, et al., Defendants/Appellants.	)	No. 74,619 E.D. No. 60,116

TRANSFER FROM THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT
ON APPEAL FROM THE CIRCUIT COURT OF
PERRY COUNTY, MISSOURI
24th JUDICIAL CIRCUIT
HON. A.J. SEIER, CIRCUIT JUDGE

SUPPLEMENTAL BRIEF OF APPELLANTS MARGARET OCHS, as Personal Representative of Estate of Alan Ochs, et al.

ALBERT C. LOWES
Missouri Bar #17061

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ATTORNEYS FOR APPELLANTS

I.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOUR OF RESPONDENT BECAUSE RESPONDENT AND APPELLANT WERE ADOPTED BY JUDICIAL DECREE IN COLORADO, WHICH ADOPTION MUST BE GIVEN FULL FAITH AND CREDIT BY MISSOURI UNDER ARTICLE IV OF THE UNITED STATES CONSTITUTION TO THE SAME EXTENT SAID ADOPTION WOULD BE RECOGNIZED BY COLORADO COURTS, IN THAT UNDER COLORADO LAW RESPONDENT AND APPELLANT WERE DECLARED THE SAME AS NATURAL BORN CHILDREN FOR ALL INTENTS AND PURPOSES, AND THUS WOULD CONSTITUTE HEIRS OF THE BODY, AND WOULD BE ENTITLED TO THE FEE-TAIL REMAINDER.

1. *Fauntleroy v. Lum*, 210 U.S. 230 (1908).
2. *Mutual Life Ins. Co. v. Benton*, 34 F. Supp. 859 (W.D. 1940).
3. *Slattery v. Hartford-Connecticut Trust Co.*, 161 A. 79 (Conn. 1932).
4. *Delaney v. First National Bank in Albuquerque*, 386 P. 2d 711 (N.M. 1963).
5. U. S. Constitution, Article IV, § 1.
6. Colo. Rev. Stat. C4, § 4 (1935).

7 Eckhardt, Wm., *Work of Missouri Supreme Court for 1953 – Property,* 19 Mo. L. Rev. 336, 337 n. 10 (1954).

II.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOUR OF RESPONDENT BECAUSE EQUAL PROTECTION AND SUBSTANTIVE DUE PROCESS UNDER THE 14th AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE MISSOURI CONSTITUTION PROHIBITS DISCRIMINATION AGAINST PERSONS ON THE BASIS OF PARENTAGE IN THAT RESPONDENTS AS ADOPTED CHILDREN ARE MEMBERS OF A SUSPECT CLASSIFICATION, AND DENIAL OF THEIR RIGHT TO INHERIT AS FEE-TAIL REMAINDERMEN UNDER FORMER RSMO 14079 CONSTITUTES DISCRIMINATION ON THE BASIS OF PARENTAGE AND FORWARDS NO COMPELLING STATE INTEREST NOR DOES THE STATUTE BEAR A RATIONAL RELATIONSHIP TO A LEGITIMATE STATE PURPOSE.

1. *Busch v. Busch,* 776 S.W.2d 734 (Mo. banc 1989).
2. *Trimble v. Gordon,* 430 U. W. 762 (1977).
3. U. S. Constitution, Amendment XIV.
4. Missouri Constitution, Amendment XIV.
5. *Levy v. Louisiana,* 391 U.S. 68 (1968).
6. *Glona v. American Guarantee and Liability Insurance Company,* 391 U.S. 73 (1968).
7. *In Re: Cupples Estate,* 199 S.W. 2d 556 (1917).

8. RSMo § 14079 (1929).

9. *Gross v. Harris*, 664 F.2d 667 (8th Cir. 1981).

10. *White v. Harris*, 504 F. Supp. 153 (C.D. Ill. 1980).

11. *In Re Jensen*, 162 N.W. 2d 861 (N.D. 1968).

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

CHERYL JEAN EASTER, P.O. Box 930, Flora Vista, NM 87415, Plaintiff/Respondent, vs. MARGARET OCHS, as Personal Representative of Estate of Alan Ochs, et al. 1207 2nd Street, Graham, TX 76046, Defendant/Appellant.	)	No. 60,116

APPEAL FROM THE CIRCUIT COURT OF
PERRY COUNTY, MISSOURI
24th JUDICIAL CIRCUIT
HON. A. J. SEIER, CIRCUIT JUDGE

BRIEF OF APPELLANT
MARGARET OCHS, as Personal Representative of Estate of Alan Ochs, et al.

ALBERT C. LOWES
Missouri Bar #17061

DAVID J. ROTH II
Missouri Bar #36648

LOWES & DRUSCH
2913 Independence Street
Cape Girardeau, MO 63701
314-335-7200

ATTORNEYS FOR APPELLANT

POINTS RELIED ON

I.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOUR OF RESPONDENT BECAUSE THE PROVISIONS OF A WILL ARE TO BE CONSTRUED IN CONFORMITY WITH THE TESTATOR'S INTENT, AND TESTATOR'S WILL SHOWED NO INTENT TO EXCLUDE ADOPTED GRANDCHILDREN HAS REMAINDERMEN UNDER A FEE-TAIL DEVISE, IN THAT TESTATOR'S WILL MADE DEVISES TO ALL OF HIS CHILDREN AND MADE NO ENTAILED DEVISES TO HIS DAUGHTERS AS WOULD INDICATE AN INTENT TO EXCLUDE NON-BLOOD DESCENDANTS.

1. *First National Bank v. Sullivan*, 394 S.W.2d 273 (Mo. 1965).
2. *Commerce Trust Co. v Weed*, 318 S.W.2d 289 (Mo. 1958).

II.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOUR OF RESPONDENT BECAUSE RESPONDENT AND APPELLANT WERE ADOPTED BY JUDICIAL DECREE IN COLORADO, WHICH ADOPTION MUST BE GIVEN FULL FAITH AND CREDIT BY MISSOURI UNDER ARTICLE IV OF THE UNITED

STATES CONSTITUTION TO THE SAME EXTENT SAID ADOPTION WOULD BE RECOGNIZED BY COLORADO COURTS, IN THAT UNDER COLORADO LAW RESPONDENT AND APPELLANT WERE DECLARED THE SAME AS NATURAL BORN CHILDREN FOR ALL INTENTS AND PURPOSES, AND THUS WOULD CONSTITUTE HEIRS OF THE BODY AND WOULD BE ENTITLED TO THE FEE-TAIL REMAINDER.

1. *Busch v. Busch,* 776 S.W.2d 374 (Mo. banc 1989).
2. *Stanley v. Illinois,* 405 U.S. 645 (1972).
3. *Weinberger v. Wisenfeld,* 420 U.S. 636 (1975).
4. *Lehr v. Robertson,* 463 U.S. 248 (1983).
5. *E.M.R. v. G.E.R.,* 431 S.W.2d 152 (Mo. 1968).
6. *Levy v. Louisiana,* 391 U.S. 68 (1968).
7. *Glona v. American Guarantee and Liability Insurance Company,* 391 U.S. 73 (1968).
8. *In Re: Cupples Estate,* 199 S.W.2d 556 (1917).

III.

THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT IN FAVOUR OF RESPONDENT BECAUSE EQUAL PROTECTION AND SUBSTANTIVE DUE PROCESS UNDER THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE MISSOURI CONSTITUTION PROHIBITS DISCRIMINATION AGAINST PERSONS ON THE BASIS OF PARENTAGE IN THAT RESPONDENTS AS ADOPTED CHILDREN ARE MEMBERS OF A SUSPECT CLASSIFICATION, AND DENIAL OF THEIR

RIGHT TO INHERIT AS FEE-TAIL REMAINDERMEN UNDER FORMER RSMO § 14079 CONSTITUTES DISCRIMINATION ON THE BASIS OF PARENTAGE AND FORWARDS NO COMPELLING STATE INTEREST.

1. *Fauntleroy v. Lum,* 210 U.S. 230 (1908).
2. *Hampton v. McConnell,* 3 Wheat. 234.
3. *Mutual Life Ins. Co. v. Benton,* 34 F. Supp. 859 (W.D. 1940).
4. *Slattery v. Hartford-Connecticut Trust Co.,* 161 A. 79 Conn. (1932).
5. *Delaney v. First National Bank in Albuquerque,* 386 P. 2d 711 (N.M. 1963).

Missouri
Form-85

Case Number
CV388-136CC

NOTICE OF APPEAL
TO MISSOURI COURT OF APPEALS

IN THE CIRCUIT COURT OF PERRY COUNTY, DIVISION

Cheryl Jean Easter,

Plaintiffs

vs.

Margaret Ochs, as Personal Representative of Estate of Alan Ochs, et al.

x Docket Fee Enclosed

Judge/Division
Hon. A. J. Seier

Court Reporter
N/A – Summary Judgment

Date of Judgment/ Sentence
April 16, 1991

Date of Appeal Bond
N/A

Date Notice Filed
April 26, 1991

Appellant's Name
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Brief Description of Case

Conflict of laws question as to whether a tract of land descends by its fee-tail under Missouri deed, or under the provisions of a Colorado will, and the status of adopted children as takers.

FILED
APR 26 1991
DONNA GUEMMER
Circuit Clerk, Perry County, Mo.

Signature of Attorney or Appellant Date
April 26, 1991

IN THE CIRCUIT COURT OF
PERRY COUNTY, MISSOURI
AT PERRYVILLE, MISSOURI

CHERYL JEAN EASTER, Plaintiff, vs. MARGARET OCHS, as Personal Representative of the ESTATE OF ALAN KEITH OCHS, and MARGARET OCHS, BRIAN KEITH OCHS, MARK ALAN OCHS, WILLIAM THOMAS OCHS, and BERRY ALAN OCHS, being all the children and surviving heirs of Alan Keith Ochs, Deceased Defendants.	)	Case No. CV388-136CC

JUDGMENT

Now on this 16th day of April, 1991, the Court, after having reviewed the pleadings, the depositions, the Stipulation of Facts, the briefs of counsel and the other documents submitted by the parties to the Court, now takes up and considers the parties' Joint Motion for Summary Judgment.

The Court finds that there is no dispute as to any material fact and that the Plaintiff is entitled to a summary judgment against the Defendants as a matter of law.

The original party Defendant Alan Keith Ochs died on October 12, 1990, during the pendency of this cause.

The Court has substituted the following as party Defendants: Margaret Ochs, as Personal Representative of the Estate of Alan Keith Ochs, deceased, and Margaret Ochs, Brian Keith Ochs, Mark Alan Ochs, William Thomas Ochs and Berry Alan Ochs, being all the children and surviving heirs of Alan Keith Ochs.

NOW, THEREFORE, THE COURT ORDERS, ADJUDGES AND DECREES that the Plaintiff is the owner in fee simple absolute of, in and to the following described tracts of real property, lying and being situate in Perry County, Missouri, and more particularly described as follows:

Tract I (Mary Knox Farm)

Part of the NE 1/4 of Fractional Section 20 and part of the NW 1/4 of the NW 1/4 of Section 21, all in T.36 N., R. 12 East. Beginning at the Northeast corner of said Section 20 at a stone and running thence East 10.75 chains to a stone in public road; thence South 1° East 12.00 chains to a stone in said road; thence West 10.83 chains to a stone; thence South 80° West 41.00 chains to the Northeast corner of the Southeast Fractional quarter of the Northwest Fractional quarter of Fractional Section 20; thence North 20.00 chains to the quarter corner on North side of said Fractional Section 20; thence East 39.89 chains to the place of beginning, containing 76.95 acres.

Tract II (Floyd Knox Farm)

All of an 86.24 acre tract recorded in Book 103, page 121 of the Perry County Deed Records except that part recorded in Book 222, page 448 of said deed records and being part of Sections 20 and 21, all in Township 36 North, Range 12

East of the Fifth Principal Meridian, Perry County, Missouri, being more particularly described as follows:

Beginning at an iron pin on the West line of said Section 21 from which the Northwest corner of said Section 21 bears North 792.00 feet; thence East 683.72 feet to an iron pin on the centerline of a county road; thence along said centerline South 39 degrees 18 minutes 27 seconds West 130.53 feet; thence South 51 degrees 14 minutes 10 seconds West 343.12 feet; thence South 58 degrees 00 minutes 32 seconds West 759.17 feet to an iron pin on the East line of said Section 20 and being the Northwest corner of a 0.13 acre tract recorded in Book 271, page 336 of said deed records and being on the West line of a 1.32 acre tract recorded in Book 222, page 448 of said deed records; thence leaving said centerline along said West line North 00 degrees 06 minutes 17 seconds West 76.62 feet to an iron pin the most Northern corner of said 1.32 acre tract; thence North 32 degrees 06 minutes 57 seconds West 42.90 feet to an iron pin the most Northern corner of a 0.31 acre tract recorded in Book 222, page 448 of said deed records; thence South 57 degrees 53 minutes 12 seconds West 304.92 feet to an iron pin in the Northwest corner of said 0.31 acre tract; thence South 12 degrees 35 minutes 42 seconds East 86.40 feet to an iron pin the Southeast corner of a .031 acre tract recorded in Book 103, page 370 of said deed records; thence South 55 degrees 42 minutes 42 seconds West 198.70 feet to an iron pin on the North line of United States Survey

1843; thence along said North line South 73 degrees 11 minutes 50 seconds West 2,877.02 feet to an iron pin at the intersection of the North line of said survey with the South line of the Southeast quarter of the Northwest quarter of said Section 20; thence leaving said North line along said South line North 89 degrees 56 minutes 14 seconds West 483.28 feet to an iron pin the Southwest corner of said quarter quarter; thence North 00 degrees 06 minutes 59 seconds East 1,300.86 feet to the Northwest corner of said quarter quarter; thence North 89 degrees 57 minutes 32 seconds East 1,313.40 feet to an iron pin in State Highway "C" the Northeast corner of said quarter quarter; thence North 79 degrees 29 minutes 54 seconds East 2,703.64 feet to the point of beginning and containing 93.63 acres.

Subject to highway right-of-way and county road right-of-way and all other easements and restrictions of record or in effect.

Tract III (Christian Ochs Farm)

Part of the East Half of the Northeast Quarter of Section 33, Township 35 North, Range 11 East of the Fifth Principal Meridian and more particularly described as follows: commencing at an iron pin at the Southwest corner of the Northeast Quarter of aforesaid Section 33; thence North 89° 25' 53" East along the South line of aforesaid Northeast Quarter a distance of 1319.73 feet to a fence post, said post being the point of beginning of the tract described; thence North 00° 38' 30" West a distance of 1746.50 feet to an iron pin; thence North 89° 21' 12" East a distance of 821.46 feet to an iron pin on the West

right-of-way line of State Highway No. 61; thence along and with said right of way line as follows: Southeasterly along the arc of a curve to the right having a central angle of 00° 38' 02" and a radius of 1869.67 feet a distance of 20.69 feet; South 14° 38' 37" East a distance of 1689.04 feet; Southeasterly along the arc of a curve to the left having a central angle of 04° 29' 32" and a radius of 1186.28 feet a distance of 93.01 feet to an iron pin on the South line of aforesaid Northeast Quarter; thence South 89° 25' 53" West along said South line a distance of 1261.27 feet to the point of beginning containing 41.70 acres and subject to any easements, reservations or restrictions on record or now in effect.

Tract IV (Bois Brule Bottom)

Part of 125 acres of land in Bois Brule Bottom in Perry County, Missouri, devised by Adolph Ochs to Oneida Bergman, Esther Weinrich and Erwin Ochs in Survey 1866, Townships 36 and 37 North, Range 11 East of Fifth Principal Meridian, Perry County, Missouri, described as follows:

Beginning at the Southwest corner of Survey 1867, a point in the middle of the public road; South 15 feet from an iron post set in concrete at the side of the road; thence North 7¾° East 15.50 chains to the true beginning point of the land herein described; thence West 15 chains to a point on the West line of 70 acres described in deed recorded in Volume 103 at Page 408 of the Perry County, Missouri, Land Records; a point on the West side of a drainage ditch; thence North 0° 20" West 15.22 chains with said West line to a point; thence North 2° West 9.43 chains to a point; thence East 18.50

chains to the line between Surveys 1866 and 1867; thence South 7 3/4 West 25.00 chains to the place of beginning, containing 41.32 acres, more or less.

and the Defendants, nor anyone for them or in their behalf, shall have any right, title or interest in and to the said real property and that the Defendants and anyone for them or in their behalf shall be forever enjoined and restrained from asserting, claiming, or setting up any right, title or interest in and to the said real property.

SO ORDERED.

/S/ A. J. SEIER

JUDGE

Entered of record this ___ day of April, 1991.

IN THE CIRCUIT COURT OF PERRY COUNTY,
MISSOURI AT PERRYVILLE, MISSOURI

CHERYL JEAN EASTER,	)	
	)	
Plaintiff,	)	Case No.
vs.	)	CV388-136CC
ALAN KEITH OCHS,	)	
	)	
Defendant.	)	

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Come now the defendants, Margaret Ochs, Brian Keith Ochs, Mark Alan Ochs, William Thomas Ochs and Berry Alan Ochs, by their attorneys, Lowes & Drusch of Cape Girardeau, Missouri and respectfully submit the following Memorandum of Law in opposition to Plaintiff's Motion for Summary Judgment and move the Court enter Summary Judgment for them.

The recitation by the Plaintiff concerning the properties which are in dispute and how they were devised is correct up to Erwin Ochs' death. Where the Plaintiff and Defendants part company is which law should control upon Erwin's death.

By the Stipulation of Facts, the properties which are the subject of this Motion for Summary Judgment were devised by a "fee tail". That was set forth by Adolph Ochs when he executed his Last Will on June 28, 1937. He died on July 4, 1937. His son, Erwin, adopted the siblings now known as Cheryl Easter and Alan Keith Ochs on January 15, 1947.

Margaret Ochs is the widow of Alan Ochs who died on October 12, 1990. Brian Keith Ochs, 21, Mark Alan Ochs, 20, William Thomas Ochs, 19, and Berry Alan Ochs, age 6, are the sons of Alan Keith Ochs.

For purposes of this Motion, Defendants would submit the family tree presented by Plaintiff is correct, except the inclusion of the sisters has no meaning in terms of this Motion.

It is undisputed that the adoption of Cheryl Easter and Alan Keith Ochs took place in Colorado on January 15, 1947, as shown by the copy of the adoption papers which were included in the Stipulation of Facts. The law in Colorado which was in effect and which was submitted to the court, clearly has *no* limitation as to the inheritance rights of an adopted child. In particular, the Statute C4, Section 5 says:

> "Such child shall be to all INTENTS AND PURPOSES the child and legal heir of the persons adopting him or her, entitled to all the rights and privileges and subject to all obligations of a child of such person begotten in lawful wedlock . . . " (emphasis ours)

A later revision of that statute made no essential changes in that language. (*See* Exhibit 2 of Defendants attached to Stipulation). If Colorado law applies, then heirs of the body included adopted children, even if the court were to interpret the law at the time of the making of the will by Adolph Ochs. Therefore, taking the descent of entailed property which the Plaintiff has offered, the court should stop at the point where Erwin Ochs dies and devise the property equally to Alan Ochs and Cheryl Easter. Since there were heirs of the body, via Colorado

law, there was no failure of issue and therefore no reversion took effect.

Why should Colorado law apply? Missouri has a statute, originally Section 9616(b) which later became the present Section 453.170 and which was approved on May 17, 1946. That statute said that:

> "Children adopted pursuant to the laws of other states. – Any person adopted pursuant to the laws of other States of the Union, whenever the adopted person's rights are affected or determined by the laws of this State, shall, from the date of said adoption, be deemed and held to be for every purpose the lawful child of its parent or parents by adoption as fully as though born to them in lawful wedlock and such adoption shall have the same force and effect as adoption under the provisions of this chapter, including all inheritance rights."

There is no limitation contained in that statute upon inheritance rights. A proper question would be what is meant by "holding them for every purpose the lawful child of parent or parents by adoption." At least as of the time of this adoption, the only case applying Missouri law that had discussed what governs the status of an adopted child and his capacity to inherit was *Mutual Life Ins. Co. of New York v. Benton, et al.* 34 F.Supp 859, (W.D. 1940). In that case, the Court, determined that the status of an adopted child *and* his capacity to inherit were governed by the laws of forum authorizing the adoption. (*See* copy of Mutual Life Insurance attached). The Plaintiff's argument appears to be that the "status" of adoption is all that need be honored by the State of Missouri but not the incidents of adoption.

To that end, the Plaintiff has cited conflicts articles stating that all that need be considered is the law of the land where the property is.

Such a simplistic premise ignores the meaning of an adoption, particularly as set forth by Colorado. An adoption without the full rights and privileges as set forth in the foreign jurisdiction is not a full adoption. It would be absurd to say that one is an adopted child for all purposes except for those we intend to cut out, particularly as here where significant inheritance rights are involved.

Plaintiff would submit that the better view, albeit a minority one, was suggested in the Restatement of Law Conflicts 2nd Section 290, which says:

> "An adoption rendered in a state having judicial jurisdiction under the rule of Section 78 will usually be given the same effect in another state as is given by the other state to a decree of adoption rendered by its own courts."

Plaintiff would submit that comment (b) of § 290 contains the better view which says:

> "A minority of courts, however, take the position that the inheritance rights of the adopted child pertain to status itself and hence are governed by the local law of the state where the adoption was granted". (*See* for example *Slattery v. Hartford-Connecticut Trust Co.* 161A 79 (1932).

While an older case, the *Slattery* case presents a better way to approach a sister state's adoption. In *Slattery,* the Connecticut court was dealing with distribution of property involving an adopted child and a widow. Under Connecticut law, the adopted child could inherit from

adopting parents or relatives but not from his natural parents. Under Michigan law, the state where he was adopted, the adopted child could inherit from either set of parents.

In determining that the child was entitled to inherit, because of the Michigan adoption, the Court looked to see if there was anything that would be injurious to public laws or violate positive laws of the state of Connecticut. The Court's well reasoned analysis was best summed up when it said:

> "The mere fact that to give effect to the restrictive nature of the Michigan statute of adoption might result in allowing a child adopted under it greater rights than he would have if adopted under our own law is not ground for refusing to uphold those rights. 'Similar provisions are to be expected, but even if a foreign law gives a right which ours does not; or bases the right on a different theory of justice, it in no way establishes that we are right and the foreign state wrong. We are not at liberty to refuse the enforcement of the foreign law in order to suit our own view of what is fair and right under the stated circumstances. Our courts do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted traditions of the common weal.' " *Slattery* at Page 80.

If an adoption involves a bundle of rights among which the attempt is to provide recognition that the adopted person, at least under Colorado statute, has the same status as a natural child, certainly right of inheritance is part of that package.

Applying the analysis suggested by the *Slattery* case, there is nothing offensive to Missouri public policy or to positive laws of the State of Missouri to recognize the effect of the Colorado adoption statute. In fact, one can argue forcefully that the result achieved therein is closer in spirit to what Grandpa Ochs may have intended, since he could not have known who the heirs of his son Erwin's body would be until such time as Erwin died.

Another example of how other courts have examined a sister state's adoption and given it full faith and credit is the case of *Delaney v. First National Bank in Albuquerque* 386 P. 2d 711 (N.M. 1963). There, although dealing with an adult adoption, the New Mexico Supreme Court gave full faith and credit to a Colorado adoption of a adult even though under New Mexico law it was *not* possible to have that kind of adoption. (*See* copy of case attached).

For all the reasons stated above, and in particular the fact that one cannot arbitrarily divide the "status" of adoption and inheritance rights from same, this Court should apply Colorado law and find that there was a fee tail by which Cheryl Easter and Alan Keith Ochs inherited. Having found that they would then be joint tenants of the three properties mentioned.

Alternatively, the Defendants would argue as suggested by Restatement of Conflicts Law 2d Section 328 that it would be an unconstitutional limitation by the State of Missouri to deny rights of succession to adopted children as suggested here.

The Court is referred to Restatement of Law Conflicts 2d Section 237, comment (f) which suggests that such limitations may be an unconstitutional limitation under

the equal protection clause of the Fourteenth Amendment of the United States Constitution by such action. The Court referred to the cases of *Levy v. Louisiana* 391 U.S. 68 (1968) and *Glona v. American Guarantee and Liability Insurance Company* 391 U.S. 73 (1968) where the United States Supreme Court held it unconstitutional to deny in the former for illegitimate children the right to recover for wrongful death of a parent and in the latter for denial to the parent for right to recover for an illegitimate child's wrongful death. Defendants argue that the same rationale supporting the Supreme Court's determination of unconstitutionality for violation of the equal protection clause is no less applicable here. (*See* copies of attached cases).

The earlier Supreme Court case of *Hood v. McGeehee* 35 S. Ct. 718 (1915) may be distinguished as an aberration simply involving contract rights contained within an instrument of adoption and not giving effect to statutes construing same.

Alternatively, if this Court should find that Missouri law should apply, the court is reminded that one could not know the heirs of Erwin's body until he died. At the time Erwin died in 1976, the heirs at law would have been at law, Cheryl and Alan. Also, the adoption statute at that time would have provided that no limitation for adopted children for fee tails existed.

The legislature has the power to change the law of descent at any time.

> "The right of the legislature to prescribe the right of decedent and inheritance cannot be doubted. It is not a natural right." *In Re: Cupples Estate* 199 S.W.2d 556 at 558 (1917).

What Defendants believe happened is that a fee tail was written up because that was in vogue at that time that Adolph Ochs made his Will. Even if it is argued that he knew that a fee tail may have had some exclusion by its creation, Adolph would also had to have known that one did not have heirs of the body until one's death.

For any or all of the above mentioned reasons, this Court should enter Summary Judgment in favor of the Defendants finding that they have a one-half interest in the aforementioned properties.

The Court requested some discussion as to adverse possession. Although the Plaintiff has withdrawn that from her brief, and without waiving in any way the objection Defendants made at hearing and renew again, the Defendants would refer to the Court to one of the more recent cases on adverse possession, *Green v. Lange* 797 S.W.2d 765 (Mo. App. 1990) stating that there must be proof of five elements by a claimant namely:

Possession:

1. That is hostile and under claim of right;
2. Actual;
3. Open and notorious;
4. Exclusive; and
5. Continuous for a period of ten (10) years.

Missouri is a "fact pleading" state and any fairreading of the pleadings submitted in the multiple counts by the Plaintiff would show that all of the elements necessary to infer or even make an argument that the same is being asked for adverse possession are not present and

this Court cannot substitute or help the Plaintiff redraft her Petition. Up until the time of hearing, Plaintiff had the right to request leave to amend and did not avail herself of same. Defendants have made a timely objection to her attempting to go outside the scope of the pleadings and this Court should continue to sustain the objections to adverse possession.

Respectfully submitted,

LOWES & DRUSCH

By /S/ Michael H. Maguire
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314-335-7200
Attorneys for Defendants

IN THE CIRCUIT COURT OF PERRY COUNTY,
MISSOURI AT PERRYVILLE, MISSOURI

CHERYL JEAN EASTER,	)	
	)	
Plaintiff,	)	Case No.
vs.	)	CV388-136CC
	)	
ALAN KEITH OCHS,	)	
	)	
Defendant.	)	

PLAINTIFF'S AND DEFENDANT'S JOINT MOTION FOR SUMMARY JUDGMENT

COMES NOW Plaintiff Cheryl Jean Easter, by and through her attorneys, Finch, Bradshaw, Strom & Steele and also comes the Defendant Alan Keith Ochs and the parties claiming through him, by and through their attorneys, Lowes & Drusch, and hereby respectfully request the Court to make and enter an order pursuant to Missouri Rule of Civil Procedure 74.04 for summary judgment on the issue as to whether Alan Keith Ochs, and the persons who claim through him have any right, title or interest in the subject real property as there exists no dispute as to any material fact necessary for such a finding and either the Plaintiff or the Defendant is entitled to a judgment as a matter of law on that issue.

The parties herewith deliver to the Court in support of the motion for summary judgment a stipulation of facts, the deposition of Cheryl Jean Easter taken on April 1, 1989, the deposition of Alan Keith Ochs, taken on April 1, 1989, and two other documents, namely, the "Ochs Family Tree" and the Plaintiff's suggestion as to the "Descent of Entailed Property".

The parties jointly request the Court to review the pleadings, the depositions, the stipulation of facts and the "Ochs Family Tree" and the "Descent of Entailed Property" and determine, as a matter of law, whether or not the Defendant, now deceased, and those persons who claim through him, have any right, title or interest in and to the subject real property located in Perry County, Missouri. The precise issue for determination, as a matter of law, is whether or not the said Alan Keith Ochs, as the adopted son of Erwin Ochs and Stella Ochs, his wife, can claim an interest in the subject real property.

WHEREFORE, the parties jointly request the court to review the pleadings, the depositions, the stipulation of facts, the "Ochs Family Tree" and the "Descent of Entailed Property" and determine, a matter of law, whether or not the said Alan Keith Ochs, now deceased,

and those persons who claim through him, have any right, title or interest in the subject real property.

Respectfully submitted,

FINCH, BRADSHAW, STROM & STEELE

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ATTORNEYS FOR PLAINTIFF

LOWES & DRUSCH

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ATTORNEYS FOR DEFENDANT

IN THE CIRCUIT COURT OF PERRY COUNTY,
MISSOURI AT PERRYVILLE, MISSOURI

CHERYL JEAN EASTER, Plaintiff,	)	
vs.	)	Case No.
ALAN KEITH OCHS, Defendant.	)	

STIPULATION OF FACTS

COME NOW the parties and hereby stipulate to the following facts:

1. Adolph Ochs, a resident of Perry County, Missouri, died testate on July 4, 1937.

2. Adolph Ochs executed his Last Will on June 28, 1937. A true and correct copy of his Last Will and Testament is attached hereto and marked Exhibit "A". The Last Will of Adolph Ochs was filed in Perry County, Missouri and was probated in Perry County, Missouri.

3. Adolph Ochs owned, at the time of his death, various tracts of real property located in Perry County, Missouri, four (4) of which are the subject of this lawsuit. Each of the tracts were included on the Inventory and Appraisement filed in the Court.

4. Those four (4) tracts are referred to as the "Mary Knox Farm", the "Floyd Knox Farm", the "Christian Ochs Farm" and the "Bois Brule Bottom".

5. *Mary Knox Farm.* In Paragraph 7th of the Last Will of Adolph Ochs, the Testator devises the Mary Knox Farm as follows:

> I devise to my son, Erwin Ochs, of Colorado, 77.95 acres, near Point Rest, Perry County, Mo., known as "Mary Knox Farm" in fee; . . .

6. *Floyd Knox Farm.* In Paragraph 7th of the Last Will of Adolph Ochs, the Testator devises the Floyd Knox Farm as follows:

> . . . and I also devise to said Erwin Ochs for and during his natural life with remainder to his bodily heirs, 86 acres of land near Point Rest, in said County, and known as the "Floyd Knox Farm"; . . .

7. *Christian Ochs Farm.* In Paragraph 7th of the Last Will of Adolph Ochs, the Testator devises the Christian Ochs Farm as follows:

> . . . and I further devise to him the remainder after my wife's life estate in the Christian Ochs farm of 42 acres on Highway 25 to him and his bodily heirs.

8. *Bois Brule Bottom.* In Paragraph 9th of the Last Will of Adolph Ochs, the Testator devises the Bois Brule Bottom as follows:

> The 125 acres in said Bois Brule Bottom that I acquired from Pat, Leonard and A. N. Esselman, being a part of the George Esselman Estate, I devise as follows: One-third thereof to Oneida Bergman in fee; one-third thereof to Esther Weinrich in fee; and the remaining one-third to my son, Erwin Ochs, and the heirs of his body.

9. Adolph Ochs also included the following residuary clause in Paragraph 10th of his Last Will:

> I bequeath all my personal property, and all the rest and residue of my property, not herein before specifically devised or bequeathed, in equal parts to my wife and my said children, my wife taking a child's part therein.

10. Adolph Ochs married Rosetta Ochs.

11. There were three (3) children born of the marriage of Adolph Ochs and Rosetta Ochs, namely, Erwin Ochs, Esther Weinrich and Oneida Bergman.

12. At the time of his death, Adolph Ochs was survived by his spouse, Rosetta Ochs, and their three (3) children, Oneida Bergman, Erwin Ochs and Esther Weinrich.

13. Rosetta Ochs, the surviving spouse of Adolph Ochs, died intestate on January 10, 1943, survived by her three (3) children, Erwin Ochs, Esther Weinrich and Oneida Bergman. A certified copy of the Application for Letters of Administration filed in the estate of Rosetta Ochs, deceased, is attached hereto and marked Exhibit "B".

14. Esther Weinrich resides in Perry County, Missouri.

15. Oneida Bergman died December 4, 1964.

16. Erwin Ochs died September 11, 1976.

17. Erwin Ochs married Stella Ochs and there were no children born of their marriage. Cheryl Ochs Easter and Alan Keith Ochs are the legally adopted children of

Erwin Ochs and Stella Ochs and were adopted on January 15, 1947, pursuant to the laws of the State of Colorado. A true and correct copy of the Decree of Adoption is attached hereto and marked Exhibit "C".

18. Erwin Ochs was survived by his wife, Stella Ochs, and the two adopted children, Cheryl Ochs Easter and Alan Keith Ochs.

19. Erwin Ochs, a resident of St. Louis County, Missouri, died testate September 11, 1976. Erwin Ochs executed his Last Will and Testament on October 24, 1970. A true and correct copy of his Last Will and Testament is attached hereto and marked Exhibit "D". The Last will and Testament of Erwin Ochs was filed in the Circuit Court of the City of St. Louis, Missouri.

20. Erwin Ochs provided in Article Second of his Last will and Testament as follows:

> I hereby give, devise and bequeath all of the rest, residue and remainder of my property, real, personal or mixed, wheresoever located, to my wife, Stella E. Ochs, to have and to hold as her property absolutely.

21. Erwin Ochs made bequests to his children, Cheryl J. Easter, then known as Cheryl J. Kirk, and Alan K. Ochs, only in the event that his wife, Stella E. Ochs did not survive him.

22. Stella E. Ochs did, in fact, survive Erwin Ochs.

23. Stella E. Ochs, the wife of Erwin Ochs, died testate on January 15, 1986. Stella E. Ochs executed her Last Will and Testament on March 22, 1984. A true and correct copy of her Last will and Testament is attached

hereto and marked Exhibit "E". The Last Will and Testament was filed in the Circuit Court of the City of St. Louis, Missouri and was probated there.

24. Stella E. Ochs was survived by the said two (2) legally adopted children, Cheryl Jean Easter and Alan Keith Ochs.

25. On February 23, 1984 the said Stella Ochs, as a single person, remised, released and quit claimed the "Christian Ochs Farm" to Cheryl J. Easter by a quit claim deed, dated February 23, 1984 and filed of record in the Office of the Recorder of Deeds for Perry County, Missouri, on February 23, 1984 in Book 246 at Page 21. A true and correct copy of this quit claim deed is attached hereto and marked Exhibit "F".

26. The Last Will and Testament of Stella E. Ochs devises all real property owned by Stella E. Ochs in Perry County, Missouri, to her daughter, Cheryl J. Easter.

27. The third article of the Last Will and Testament of Stella E. Ochs provides as follows:

> I give and devise all other real property which I own including, but not limited to, five parcels of land in Perry County, Missouri, to my daughter, Cheryl J. Easter, to be hers absolutely.

28. Stella E. Ochs specifically left nothing to Alan K. Ochs. Article Nine of the Last Will and Testament of Stella E. Ochs provides as follows:

> I intentionally make no bequest to my son, Alan K. Ochs.

29. On or about September 19, 1986, Cheryl Jean Easter tendered a final settlement in the Estate of Stella E.

Ochs to the Probate Division of the 22nd Judicial Circuit for the City of St. Louis, Missouri, the same being Estate No. 3-86-131-P-D. On February 3, 1987, the aforementioned final settlement and distribution was approved. A true and correct copy of the said order is attached hereto and marked Exhibit "G".

30. Pursuant to the said final settlement and distribution, the Probate Court of the City of St. Louis, found that whatever right, title and interest the Decedent Stella E. Ochs had at the time of her death in all the subject Perry County, Missouri, real property was transferred, assigned and distributed to Cheryl Jean Easter, as devisee, under the Last Will and Testament of Stella E. Ochs.

31. That in 1947, the applicable law on adoptions in Colorado, Vol. II, 1935 Colorado Statutes Annotated 4, Section 5 stated that an adopted child was entitled to all the rights and privileges and subject to all obligations of a child of such person begotten in lawful wedlock. (See Exhibit 1, copy of said statute).

32. That a later revision of said statute did *not* change the rights of an adopted child. (See Exhibit 2, copy of said statute).

FINCH, BRADSHAW, STROM & STEELE

By: /s/ Dale E. Gerecke
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ATTORNEYS FOR PLAINTIFF

LOWES & DRUSCH

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ATTORNEYS FOR DEFENDANT

PLAINTIFF'S EXHIBIT
"A"

LAST WILL OF ADOLPH OCHS

In the name of the Holy Trinity, I, Adolph Ochs, of the County of Perry and State of Missouri, do hereby make, declare and publish this to be my Last Will and Testament, hereby revoking all and any other testamentary papers of any kind heretofore made by me.

1st. I desire that all my just debts and funeral expenses be paid by my executor, Rudolph Weinrich, who is hereby appointed as such, to serve without bond or other security being required of him.

2nd. I devise unto my beloved wife, Rosetta Ochs, for and during her natural life, the 42 acres, more or less, on State Highway No. 25, being the land that I acquired from Christian Ochs; and I also devise to her for and during her natural life, the 1-3/4 acre tract on which we reside the 40 acre farm near Friedenburg, in Perry County, Mo., and

3rd. I bequeath to my wife all my household goods and farming implements and machinery, now in use by me.

4th. I devise to my daughter, Oneida Bergman, the 40 acre tract near Friedenburg and the 1-3/4 acre tract on which I now reside, subject to the life estate herein above devised to my wife.

5th. I devise to my daughter, Oneida Bergman, in fee, the farm known as the "Home Tract," which came to me from my father, and also 51 acres, more or less, in Bois Brule Bottom, known as the "Klump Farm."

6th. I devise to my son, Erwin Ochs, now of the State of Colorado, absolutely and in fee simple, my 20 acre ranch on West 38th Avenue, Denver, Colorado, and being all of the land owned by me in said State.

7th. I devise to my son, Erwin Ochs, of Colorado, 77.95 acres, near Point Rest, Perry County, Mo., known as "Mary Knox Farm" in fee; and I also devise to said Erwin Ochs for and during his natural life with remainder to his bodily heirs, 86 acres of land near Point Rest, in said County, and known as the "Floyd Knox Farm"; and I further devise to him the remainder after my wife's life estate in the Christian Ochs farm of 42 acres on Highway 25 to him and his bodily heirs.

8th. I devise to my daughter, Esther Weinrich, 70 acres of land near McBride, Missouri, in Bois Brule Bottom and known as the "Otto Huber Farm"; also 50 acres in said bottom, being land conveyed to me by the Home Trust Company; also 100 acres in said bottom and being known as the farm of Peter Geile, from whom I acquired

same, on condition that said Esther Weinrich pay to Erwin Ochs or his wife, before final settlement of my Estate, the sum of Two Thousand ($2000.00) Dollars.

9th. The 125 acres in said Bois Brule Bottom that I acquired from Pat, Leonard and A. N. Esselman, being a part of the George Esselman Estate, I devise as follows: One-third thereof to Oneida Bergman in fee; one-third thereof to Esther Weinrich in fee; and the remaining one-third to my son, Erwin Ochs, and the heirs of his body.

10th. I bequeath all my personal property, and all the rest and residue of my property, not herein before specifically devised or bequeathed, in equal parts to my wife and my said children, my wife taking a child's part therein.

11th. Except the 20 acres of land in Colorado, all of my real estate is situated in the County of Perry, State of Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand to this my Last WILL, consisting of two typewritten pages, this 28 day of June, 1937.

/s/ Adolph Ochs

Signed by the said testator, Adolph Ochs, as his Last Will and Testament, in the presence of us, who at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

/s/ Geo. J. Mecker

/s/ Martha M. Mecker

DECREE IN ADOPTION

In the Juvenile and Family Court in and for the City and County of Denver and State of Colorado

No. 36309

Petitioner's Exhibit "C"

No. 36309 Court Filing Stamp

IN THE MATTER OF THE ADOPTION OF GEORGE ALLEN ADAMSON AND ROSELEE CARRIE ADAMSON, minors, by ERWIN OCHS, and STELLA OCHS.)

DECREE IN ADOPTION

This cause, coming on to be heard this 15th day of January A.D. 1947, upon the petition of Erwin Ochs and Stella Ochs, duly verified, for the adoption of the minor children heretofore known as George Allen Adamson, born at Collbran, Colorado on the 19th day of February, 1941, and Roselee Carrie Adamson, born at Montrose County, Colo., on the 2nd day of May A.D. 1942 the said petitioners appearing in their own proper persons, and the Court having read said petition and having examined the petitioners upon their oaths, and the Court being fully satisfied from the testimony submitted herein of the ability of the petitioners to properly rear, educate, support and maintain said children, and it appearing to the Court upon the examination of the petitioners that they of their own free will and accord, desire the adoption of said children; and the Court being further satisfied of the fitness and propriety of such adoption, and of the willingness and wish of said petitioners and each of them to adopt said children as their own; and it further appearing

to the Court that said children had become an inmate of THE STATE HOME FOR DEPENDENT AND NEGLECTED CHILDREN, an organization existing under the laws of the State of Colorado, on the to-wit 3rd day of October A.D. 1945, by being committed to said Home by an order of the Judge of the Juvenile and Family Court of the City and County of Denver, State of Colorado, and it further appearing to the Court that consent in writing hath heretofore been given by John C. Stoddard, Superintendent of said Home, to the petitioners herein for the adoption of said children, and the Court being now fully advised in the premises.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the said minor children heretofore known as George Allen Adamson and Rosalie Carrie Adamson, shall be from this date, to all legal intents and purposes, the children and legal heir of the petitioners, Erwin Ochs and Stella Ochs and that the name of said children is hereby changed, altered and declared to be CHERYL JEAN OCHS and Alan Keith Och [sic], and said child shall be and is hereby entitled to all the rights and privileges and subject to all legal obligations in respect to said petitioners as if to them born in lawful wedlock.

By the Court:

/S/ Philip B. Gilliam
Judge of the Juvenile and
Family Court

STATE OF COLORADO)
) ss.
City and County of Denver)

I, Roland A. Gillette of the Juvenile and Family Court in and for said County in the State aforesaid, do hereby certify the above and foregoing to be true, perfect and complete copy of the Decree of Court in the matter f [sic] the adoption of the minor child, George Allen Adamson and Rosalee Carrie Adamson by Erwin Ochs and his wife Stella Ochs.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Denver, Colorado, this 14th day of January, A.D. 1947.

ROLAND A. GILLETTE
Clerk of the Juvenile
and Family Court

By: /s/ Ruth Hillyer, Deputy